

Honorable Gregg W. Zive
United States Bankruptcy Judge



Entered on Docket
November 20, 2013

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HOLDING CO. OF COLUMBUS, LLC,
CHRISTOPHER LUCAS, AND SEAN M.
GOUHIN*

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re

ACCESS INSURANCE SERVICES, INC., a
Nevada corporation,

Debtor,

JANET L. CHUBB, Chapter 7 Trustee for
ACCESS INSURANCE SERVICES, INC., a
Nevada corporation, and LENNARD W.
STILLMAN, Special Deputy Liquidator of
WESTERN INSURANCE COMPANY, a Utah
Corporation,

Plaintiffs,

v.

LG WARRANTY CO., LLC, an Ohio limited
liability company, DALE HOLDING CO. OF
COLUMBUS, LLC, an Ohio limited liability
company, THOMAS P. HEILMANN II,
CHRISTOPHER W. LUCAS, and SEAN M.
GOUHIN,

Defendants.

Case No. BK-N-11-52830-GWZ

Chapter 7

Adversary Proceeding No. 13-05034

**ORDER ON MOTION OF
DEFENDANTS, LG WARRANTY CO.,
LLC, DALE HOLDING CO. OF
COLUMBUS, LLC, CHRISTOPHER
W. LUCAS AND SEAN M. GOUHIN
TO DISMISS CLAIMS OF LENNARD
W. STILLMAN, SPECIAL DEPUTY
LIQUIDATOR OF WESTERN
INSURANCE COMPANY, FOR LACK
OF SUBJECT MATTER
JURISDICTION**

Hearing Date: October 23, 2013

Hearing Time: 2:00 p.m.

Location: 300 Booth Street
Reno, NV 89509

On October 23, 2013, a hearing was held before the United States Bankruptcy Court in the Adversary Proceeding brought by Plaintiffs Janet L. Chubb, Chapter 7 Trustee for Access Insurance Services, Inc. ("Access"), and Lennard W. Stillman, Special Deputy Liquidator of Western Insurance Company ("Western") on Defendants LG Warranty Co., LLC, Dale Holding Co. of Columbus, LLC, Christopher W. Lucas and Sean M. Gouhin's ("Defendants") Motion to Dismiss Claims of Lennard W. Stillman, Special Deputy Liquidator of Western Insurance Company, for Lack of Subject Matter Jurisdiction (the "Motion") [Dkt. 29]. Western filed a Response to the Motion on October 8, 2013 [Dkt. 56]. Defendants filed a Reply in support of the Motion [Dkt. 58] and Access filed a Joinder In and Reply to Liquidator Stillman's Response to LG Defendants' Motion to Dismiss, With Certificate of Service [Dkt. 60] on October 16, 2013. Appearances were as noted on the record.

Having given due consideration to the Motion and the briefs filed by the Parties and the presentations made by counsel at the time of the hearing, and the Court having reviewed the record and proceedings in the above captioned case, in addition to the Findings of Fact and Conclusions of Law rendered orally at the hearing pursuant to Fed. R. Civ. P. 52 as incorporated by Fed. R. Bank. P. 7052, the Court hereby finds:

1. That the Motion implicates a number of issues, including, but not limited to, Defendants' request for a jury trial, whether the Bankruptcy Court can properly prepare proposed findings of fact and conclusions of law in this action, and whether the Bankruptcy Court has jurisdiction to hear the claims asserted by Western against a non-debtor, that would not exist in the United States District Court;

2. That the Bankruptcy Court's ability to enter any kind of decision in this adversary proceeding may be affected by the forthcoming decision of the United States Supreme Court in Executive Benefits Insurance Agency v. Peter H. Arkison, Chapter 7 Trustee of the Estate of Bellingham Insurance Agency, Inc., Case No. 12-1200;

3. That it is in the Parties' best interests to have the claims asserted in this proceeding decided in the same forum, and that there are economies and efficiencies to be gained from doing so;

1 4. That having these claims decided by the United States District Court would avoid
2 significant legal, statutory, and constitutional issues that might otherwise arise in the Bankruptcy
3 Court, as well as avoid revisiting any decisions that the Bankruptcy Court might issue in this
4 action as a result of a subsequent ruling by the United States Supreme Court in Executive
5 Benefits Insurance Agency;

6 5. That the Court has serious concerns about the exercise of supplemental jurisdiction
7 in this matter particularly regarding certain of the claims asserted by Western; and

8 6. That while the Parties have identified issues that may arise in the United States
9 District Court, including the District Court's potential exercise of personal jurisdiction over some
10 or all of the named Defendants, the above-referenced legal, statutory and constitutional issues
11 would make this matter significantly more complicated than any issues that might arise in the
12 District Court.

13 Accordingly, IT IS ORDERED as follows:

14 1. That this Court shall not apply the deadlines for filing a motion for withdrawal of
15 the reference pursuant to LR 5011(b), and that one or more of the Parties shall file a Motion to
16 Withdraw the Reference with the United States District Court no later than Friday, November, 22,
17 2013;

18 2. That the Court's ruling on the Motion is stayed pending resolution of the Motion
19 to Withdraw the Reference;

20 3. That this adversary proceeding is otherwise stayed pending resolution of the
21 Motion to Withdraw the Reference, except that the Parties shall conduct discovery pursuant to the
22 deadlines set forth below;

23 4. That the Parties will complete the initial disclosures required by FRCP 26(a)(1), as
24 adopted by FRBP 7026, no later than November 15, 2013;

25 5. That all discovery, including both fact and expert, will close on Monday, June 16,
26 2014;

27 6. That the disclosure of expert witnesses pursuant to LR 7026(a) shall be made no
28 later than Friday, May 16, 2014, for the party bearing the burden of proof on the issue in question

1 and no later than Monday, June 2, 2014 for the opposing party;

2 7. That otherwise discovery will proceed in accordance with the applicable
3 Bankruptcy Rules and Local Rules of Practice, absent further order of the Court; and,

4 8. That the Parties shall provide the Court with notice of the decision of the United
5 States District Court on the motion to withdraw the reference as soon as possible after that
6 decision is rendered. The Court and the Parties will then set a status conference.

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8 Submitted By:

9 DOWNEY BRAND LLP

10 By: 

11 Sallie B. Armstrong, Esq.

12 Michael D. Knox, Esq.

13 Attorneys for LG Warranty Co., LLC,
14 Dale Holding Co. of Columbus, LLC,
15 Christopher Lucas and Sean M. Gouhin
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1 In accordance with LR 9021, counsel submitting this document certifies as follows (check
2 one):

3 ☐ The court has waived the requirements set forth in LR 9021.

4 ☒ This is a Chapter 7 or 13 case, and either with the motion, or at the hearing, I have
5 delivered a copy of this proposed order to all counsel who appeared at the hearing, any
6 unrepresented parties who appeared at the hearing, and any trustee appointed in this case,
and each has approved or disapproved the order, or failed to respond, as indicated below
(list each party and whether the party has approved, disapproved, or failed to respond to
the document).

7 Janet L. Chubb, Chapter 7 Trustee for Access Insurance
8 Services, Inc.: **Disapprove**

9 Lennard W. Stillman, Special Deputy Liquidator of
Western Insurance Company: **Disapprove**

10 John Murtha, Counsel for Thomas P. Heilmann II: **Approved**

11 ☐ This is a Chapter 9, 11, or 15 case, and I have delivered a copy of this proposed
12 order to all counsel who appeared at the hearing, any unrepresented parties who appeared
13 at the hearing, any trustee appointed in this case, and each has approved or disapproved
14 the order, or failed to respond, as indicated below (list each party and whether the party
has approved, disapproved, or failed to respond to the document):

15 ☐ I certify that I have served a copy of this order with the motion, and no parties
16 appeared or filed written objections.
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